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In The Supreme Court Of The United States

UNITED STATES,

Petitioner,

v.

ANGELA RUIZ,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF OHIO AND 19 OTHER STATES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

This amicus brief addresses the following question:

Whether before pleading guilty, a criminal defendant has a constitutional right to obtain exculpatory information, including impeachment material, from the government.

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INTEREST OF THE *AMICI* STATES

States, like the federal government, rely heavily on guilty pleas in their criminal justice systems. More than 94% of all state criminal convictions are obtained through guilty pleas—a proportion that mirrors the federal rate. *See* Matthew R. Durose, *et al.*, *Felony Sentences in State Courts, 1998*, Bureau of Justice Statistics Bulletin 8 (Oct. 2001). Any decision by this Court regarding the prosecution's disclosure obligations before entering a plea agreement or accepting a guilty plea will, therefore, affect the operation of the criminal justice systems of all the States. Should this Court adopt the disclosure rule created by the Ninth Circuit, guilty defendants would be discouraged from pleading guilty, the privacy and safety of victims and other witnesses would be threatened, the plea process would be delayed in even the most routine cases, and the workload of prosecutors would markedly increase. Because the Constitution does not mandate that result, the amici States urge this Court to reverse the judgment of the Ninth Circuit.

SUMMARY OF ARGUMENT

The holding of the court of appeals, which gives a criminal defendant an unwaivable right to prosecutorial disclosure of relevant exculpatory and impeachment evidence prior to the acceptance of a guilty plea, is unsupported by the Due Process Clause and this Court's precedent. The principles of due process require that a guilty plea be voluntary and intelligent. The concept of "voluntary and intelligent," however, has never included a requirement that the defendant know of potential weaknesses in the prosecution case so that the defendant can more accurately weigh the risks and benefits of going to trial.

The holding of the court of appeals is also inconsistent with the due process principles promoted by

Brady v. Maryland, 373 U.S. 83 (1963). The rule set forth in *Brady v. Maryland* and its progeny advances the search for truth by helping to ensure fair trials. Where a defendant waives the right to a trial, the defendant necessarily also waives the subsidiary right to receive exculpatory and impeachment evidence from the prosecutor. Nor would any more general interest in fundamental fairness be furthered by the Ninth Circuit's rule. Neither the defendant nor defense counsel needs to know what exculpatory or impeachment evidence the prosecution possesses in order to know if the defendant is guilty. Rather, the only potential benefit to the defense is that pre-plea disclosure allows the defense to capitalize on a perceived weakness in the prosecution's case, such as the testimony of a vulnerable victim or witness. In addition, adequate due process safeguards already exist to ensure a fair plea process.

Lastly, the court of appeals rule creates new practical problems that would significantly harm the criminal justice system. The rule threatens the safety and privacy interests of victims and prospective witnesses for the prosecution. The effect of the rule would be most burdensome in cases involving vulnerable victims, where the defendant can use the victim's vulnerability to his advantage. The duties of prosecutors will be greatly increased if they are required to conduct trial preparation tasks, even in cases where there will be no trial. And the rule would cause considerable delay in the resolution of cases, even where the defendant willingly admits guilt and seeks a prompt resolution.

ARGUMENT

The Ninth Circuit Decision Is Unsupported By The Constitution Or Supreme Court Precedent And Is Detrimental To The Search For Truth, The Interests Of Victims And Witnesses, And The Effective Operation Of The Criminal Justice System.

A. The Requirement That A Plea Be "Voluntary And Intelligent" Does Not Mean That The Defendant Must Have Knowledge Of Exculpatory And Impeachment Evidence In The Possession Of The Prosecution.

1. The principles of due process require that for a guilty plea to be constitutionally valid, it must be a voluntary and intelligent act. *Brady v. United States*, 397 U.S. 742, 748 (1970). In *Brady v. United States*, this Court provided the standard for the voluntariness requirement:

> "[A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or even his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (*e.g.*, bribes)."

397 U.S. at 755 (quoting *Shelton v. United States*, 242 F.2d 101, 115 (5th Cir. 1957)).

As to the "intelligent" requirement, this Court has long held that the defendant must receive "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." *Bousley v. United States*, 523 U.S. 614, 618 (1998) (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)). A defendant must also have a "full understanding of what the plea connotes and of its consequence," including the nature of the charges, the defendant's right to a jury trial, the acts sufficient to constitute the offenses for which the defendant is charged, and the permissible range of sentences. *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). A defendant's competence and the availability of counsel tend to corroborate that the plea was intelligently made. *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973); *Brady v. United States*, 397 U.S. at 756, 758.

Neither in this case, Pet. App. 9a-10a, nor in *Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir. 1995), did the court of appeals suggest that the prosecution possessed factual information that the defendant had to know to understand the charges or to determine whether or not the defendant was, in fact, guilty as charged. Rather, the court reasoned that disclosure was necessary merely to help the defense appraise the strength of the prosecution's case before deciding whether or not to plead guilty. Pet. App. 9a-10a; *Sanchez*, 50 F.3d at 1453. That disclosure obligation is a creation of the Ninth Circuit. As shown above, this Court has never held that for a guilty plea to be "voluntary and intelligent," the defendant has to know what evidence the prosecution possesses or the potential weaknesses of the prosecution's case.

2. It may be true, as the court of appeals observed (Pet. App. 9a-10a), that a defendant's decision whether or not to plead guilty is often influenced by an appraisal of the prosecution's case. But it does not follow that a plea made without this information is constitutionally defective.

Indeed, this Court's opinions suggest just the contrary. In *Brady v. United States*, this Court declared that a defendant was not entitled to withdraw his plea of guilt "merely because [the defendant] discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case." 397 U.S. at 757.

Likewise, in *McMann v. Richardson*, 397 U.S. 759, 771 (1970), this Court held that a defendant's plea of guilty based on reasonably competent advice of counsel is an intelligent plea not open to attack on the ground that defense counsel may have misjudged the admissibility of evidence. In *McMann*, the defendants sought to withdraw their guilty pleas, which they claimed were based on confessions that were unlawfully obtained. *Id.* at 761-65. This Court characterized the claim by each defendant as a claim that the admissibility of the confession was mistakenly assessed and that, because the defendant was erroneously advised, his plea was an unintelligent and voidable act. *Id.* at 769. The Court rejected this claim, stating that the Constitution "does not render pleas of guilty so vulnerable." *Id.* Elaborating, the Court stated:

> [T]he decision to plead guilty before the evidence is in frequently involves the making of difficult judgments. All the pertinent facts normally cannot be known unless witnesses are examined and cross-examined in court. Even then the truth will often be in dispute. In the face of unavoidable uncertainty, the defendant and his counsel must make their best judgment as to the weight of the State's case. . . . Waiving trial entails the inherent risk that the good-faith evaluations of a reasonably competent attorney will turn out to be mistaken either as to the facts or as to what a court's judgment might be on given facts.

Id. at 769-70 (citing *Brady v. United States*, 397 U.S. at 756-57). The Court added that by pleading guilty, a defendant assumes the risk of ordinary error in either the defendant's or defense counsel's assessment of the law and the facts. *Id.* at 774; *see also Parker v. North Carolina*, 397 U.S. 790, 797-98 (1970). In other words, this Court has rejected the suggestion that for a plea to be knowing and intelligent, a counseled defendant must be able to assess accurately the strength or weakness of the case against him. Due process does not require such an expansive definition of those terms.[1]

B. The *Brady* Rule Exists To Assist The Court And Jury In The Search For The Truth, Thus Ensuring A Fair Trial—Interests Not Implicated Once A Defendant Waives The Right To A Trial.

1. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." This rule applies not only to evidence in the prosecutor's own files, but also to evidence in the possession

[1] The American Bar Association Standards for Criminal Justice confirm that the Ninth Circuit rule diverges from the conventional understanding of what constitutes a "voluntary and intelligent" plea. These Standards include a chapter, Pleas of Guilty, which details what information the court should provide to the defendant before accepting a guilty plea and the standards for determining the voluntariness of the plea. Standards for Criminal Justice, §§14-1.4; 14-1.5 (ABA 1997). Nowhere do the Standards suggest that a plea is only "voluntary and intelligent" if the defendant knows about exculpatory or impeachment evidence before pleading guilty.

of others acting on behalf of the prosecution, including police officers and other prosecutors. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). The Court has expanded the rule of *Brady* to require the disclosure of such evidence even when the defense has not requested it, *United States v. Agurs*, 427 U.S. 97, 107 (1976), and to include the disclosure of impeachment evidence, so long as the evidence is material to either guilt or punishment, *United States v. Bagley*, 473 U.S. 667, 676-77 (1985); *United States v. Giglio*, 405 U.S. 150, 154 (1972).

In *Bagley*, this Court found the formulation of the materiality test stated in *Strickland v. Washington*, 466 U.S. 668 (1984), to be the appropriate test for all cases involving alleged *Brady* violations. Evidence is "material" under the *Brady* analysis "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. In particular, "'[w]hen a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.'" *Id.* (quoting *Strickland*, 466 U.S. at 695).

The object of the *Brady* rule is to ensure that a defendant receives due process at trial, *i.e.*, a fair trial that results in a reliable verdict. *See Brady*, 373 U.S. at 83 ("Society wins not only when the guilty are convicted but when criminal trials are fair"); *Kyles*, 514 U.S. at 440 (discussing how disclosure by the prosecutor preserves the criminal trial "as the chosen forum for ascertaining the truth about criminal accusations"). Thus, the *Brady* line of cases, "together with earlier cases condemning the knowing use of perjured testimony, illustrate[s] the special role played by the American prosecutor in the search for truth *in criminal trials*." *Strickler v. Greene*, 527 U.S. 263, 281 (1999) (emphasis added).

This Court has never applied the *Brady* rule outside of the context of a criminal trial and sentencing. Indeed, in *United States v. Agurs*, the Court stated that the *Brady* rule "arguably applies in three quite different situations. Each involves the discovery, *after trial*, of information which had been known to the prosecution but unknown to the defense." 427 U.S. at 103 (emphasis added). None of the post-*Agurs* cases has expanded the reach of *Brady* to convictions resulting from guilty pleas. *See, e.g., Strickler*, 527 U.S. 263; *Kyles*, 514 U.S. 419.

Moreover, the *Brady* rule has never been intended as a rule of broad discovery, one that would alter the adversarial nature of the American criminal justice process. *See Bagley*, 473 U.S. at 675 ("Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur."); *Agurs*, 427 U.S. at 109 ("Whether or not procedural rules authorizing such broad discovery might be desirable, the Constitution surely does not demand that much."). For this reason, the prosecutor is not required to deliver the entire prosecution file to defense counsel. *Bagley*, 473 U.S. at 675. Rather, the prosecutor must only disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial. *Id.*

2. Given the principles underlying the *Brady* rule, it is neither appropriate, logical, nor desirable to extend the rule to cases where the defendant has waived his right to trial and pleaded guilty. Where a criminal defendant willingly admits guilt and waives his right to a trial, he necessarily also waives the subsidiary rights that help ensure that he receives a fair trial. "The *Brady* rule's focus on protecting the integrity of trial suggests that where no trial is to occur, there may be no constitutional violation." *Matthew v. Johnson*, 201 F.3d 353, 361 (5th Cir. 2000) (declining to recognize a claim of a *Brady* violation where defendant pleaded guilty). As the

Fifth Circuit reasoned, by waiving the right to trial a defendant

> eliminates the opportunity for a prosecutor to "contrive a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury." Instead, conviction is supported by the defendant's plea.

Id. at 362 (quoting *Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (internal punctuation and citation omitted)). There is simply no logic in the Ninth Circuit's holding that one can give up the right to trial but not the subsidiary right to the disclosure of *Brady* material. If the defendant pleads guilty, no judge or jury will reach a verdict based on a skewed version of the facts. No witnesses will testify against the defendant, so nothing prompts the need for impeachment evidence.

Moreover, expanding the *Brady* rule to the plea bargaining process would not promote its basic objective, the search for the truth. The pre-plea disclosure of exculpatory or impeachment evidence does not help a defendant determine the truthfulness of the charges against him. A competent defendant knows whether the allegations are true, even without knowledge of the prosecution's exculpatory or impeachment evidence. As to a guilty defendant, all pre-plea disclosure of exculpatory or impeachment evidence would do is provide him with a strategic advantage during the plea agreement process. Disclosure of evidence that is detrimental to the prosecution may enhance his bargaining position, prompting him to demand better terms for the plea agreement before agreeing to plead guilty. Alternatively, the defendant may change his mind about pleading guilty, and

may instead elect to go to trial. Neither outcome betters the criminal justice system.

And innocent defendants do not need exculpatory or impeachment evidence from the prosecutor to inform them of their innocence. This Court has recognized that "[d]efendants advised by competent counsel and protected by other procedural safeguards are presumptively capable of intelligent choice in response to prosecutorial persuasion, and unlikely to be driven to false self-condemnation." *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). Exculpatory and impeachment evidence surely becomes important at the time of trial to defendants who may have been wrongly accused. But such evidence is not necessary to ensure a constitutionally-mandated level of fairness during the plea process.

C. Existing Safeguards Sufficiently Protect Defendants During The Plea Process.

The creation of an unwaivable right to pre-plea disclosure of exculpatory and impeachment evidence is not necessary to ensure fundamental fairness in the plea process. As discussed in Section A above, a court may accept a guilty plea only where the plea is voluntary and intelligent, where the defendant has had the opportunity to be represented by counsel, and where the defendant is competent. *See Brady v. United States*, 397 U.S. at 755-56. Other safeguards also help ensure that the plea process comports with due process.

Prosecutors are obligated to seek justice. A prosecutor "is the 'servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.'" *Agurs*, 427 U.S. at 110-11 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). Concomitant with that obligation, a prosecutor who has evidence that exonerates a defendant is obligated not to pursue the conviction of that person. To be

clear, though, evidence that exonerates the defendant is not merely evidence that might give a guilty defendant some hope of a acquittal in a trial; rather, it is evidence that definitively demonstrates the defendant's actual innocence.

Further, this Court has long made clear that prosecutors may not intentionally mislead or deceive a defendant in order to obtain a guilty plea. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941) ("if [the defendant] was deceived or coerced by the prosecutor into entering a guilty plea, he was deprived of a constitutional right"). Should a plea agreement be the product of fraud or coercion, it may be found to be involuntary and nullified by the court. *Brady v. United States*, 397 U.S. at 755; *see also United States v. Mezzanatto*, 513 U.S. 196, 209-210 (1995) (stating that the appropriate response to concerns about abuse by prosecutors is to permit case-by-case inquiries into whether plea waiver agreements are the product of fraud or coercion).[2] Accordingly, the ABA Standards for Criminal Justice provide that neither defense counsel nor the prosecutor should make false statements concerning the evidence in the course of plea discussions with opposing counsel. Standards for Criminal Justice, §§4-6.2; 14-3.1(f) (ABA 1997).

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[2] The Court also noted that "the great majority of prosecutors will be faithful to their duty" and rejected the defendant's suggestion that waiver agreements should be void because they purportedly "invite prosecutorial overreaching and abuse." *Id.*

D. A Rule Requiring Pre-Plea Disclosure Of Exculpatory And Impeachment Evidence Would Pose Numerous Practical Problems.

1. Not only does the rule created by the Ninth Circuit fail to promote the search for truth or secure fundamental fairness in the plea process, it generates new problems that would significantly harm the justice system. First, early disclosure may infringe on the privacy and safety of victims and other witnesses for the prosecution. The Ninth Circuit rule compels the prosecutor to disclose potential impeachment evidence about prospective prosecution witnesses even though there will be no trial. This impeachment evidence may include mental health records, medical records, school records, and records of criminal conviction. *Cf. Pennsylvania v. Ritchie*, 480 U.S. 39, 57-58 (1987) (a criminal defendant may be entitled to *in camera* review and disclosure of otherwise confidential documents pertaining to prosecution witnesses).

In some prosecutions, an even greater concern would be raised. In many cases, a victim's or witness's safety or well-being would be jeopardized if the prosecutor were required, upon the demand of the defense and in the absence of a trial, to disclose information about the person's intent to testify. This would most often be true in cases where the defendant is in a position to intimidate the victim or witness directly or indirectly (*e.g.*, gang-related crimes, cases involving family violence, and cases of child sexual abuse). In such cases, the defendant may use this information to intimidate or otherwise pressure the victim or witness not to testify.

Under the current system, a prosecutor can protect vulnerable victims and witnesses by entering a plea agreement, which eliminates the need to disclose the information. Alternatively, the prosecutor may reduce the

opportunity for victim intimidation by delaying the disclosure of the information until closer to the trial date (to the extent permitted by discovery statutes and court orders). In contrast, under the Ninth Circuit rule, the prosecutor is left with no opportunity to protect vulnerable victims or witnesses because the prosecutor would be required to disclose this information in the absence of trial and upon the demand of the defense. Little is gained and much is lost by such a result.

Moreover, the imposition of these burdens on victims and witnesses would likely reduce the accuracy of the proceedings. If a defendant is willing to plead guilty, but then changes his mind only because of the disclosure of impeachment evidence about the victim or witness, the decision probably has little to do with the defendant's actual innocence and a great deal to do with the perceived vulnerability of the witness. Consider, for example, an accused rapist who is willing to plead guilty, but then changes his mind when he learns that the victim has a history of mental illness. His decision to plead not guilty would likely be due to his (or his attorney's) belief that the victim's history of mental illness can be used to create doubts in the jurors' minds about the victim's credibility, and not because the defendant suddenly realizes he did not commit the offense. Similar concerns are likewise raised in cases involving child sexual abuse, elder abuse, or family violence.

Making a bad situation still worse, defendants who learn from the prosecutor that their victims or key witnesses are vulnerable will be more likely to proceed to trial irrespective of their guilt. As a result, under the Ninth Circuit rule, the most vulnerable victims would be called to testify more often than they would be under the present system.

Finally, subjecting a victim to the release of highly personal information greatly reduces the victim's benefit from the plea agreement. Prosecutors frequently consider the benefits to victims provided by a plea agreement, such as avoiding the need to testify at trial and avoiding the release of personal information about the victim. If these prosecution-side benefits are significantly reduced, it is likely that the prosecutor would consequently reduce defense-side benefits. As such, neither party would be as satisfied with the agreement as he or she might have been in the absence of the Ninth Circuit rule.

2. Another negative consequence of the Ninth Circuit rule is that it would require prosecutors in every guilty plea case to conduct trial preparation tasks that are normally not undertaken until the prosecutor is fairly certain there will be a trial. These tasks would include identifying possible prosecution witnesses, checking all prosecution and police files to determine whether there is any exculpatory or impeachment evidence, and then determining whether that evidence is "material" and thus must be disclosed. *See* Pet. App. 12a-13a; 38a-39a (Tallman, J., dissenting).

Although this rule may create little burden if the plea is taken on the eve of trial, it creates a significant and illogical burden if the plea is offered early in the process. Any determination of potential evidence and the materiality of that evidence in the context of a guilty plea must be speculative. As the Sixth Circuit observed, "any number of events might . . . intervene[]" between plea negotiation and trial. *Campbell v. Marshall*, 769 F.2d 314, 324 (6th Cir. 1985). "Favorable or unfavorable rulings on the evidence might have been rendered; witnesses favorable to the defense or to the prosecution might have died awaiting trial or have become otherwise unavailable. New witnesses might have come forward; known witnesses might have recanted." *Id.* And the earlier in the process the defendant chooses to plead

guilty, the more difficult and surreal these tasks will be for the prosecutor.

For instance, if a defendant readily admits his guilt and seeks to plead guilty shortly after being charged, the police might not have conducted a full investigation of the offense. There may be witnesses who have not been interviewed, and about whom the prosecution knows little. Even so, the Ninth Circuit rule would require the prosecutor to speculate as to who might have been called as a witness, then check prosecution and police files for potential impeachment evidence about the individuals. Indeed, the Ninth Circuit rule might even require the prosecutor to determine and disclose whether these potential witnesses would be hesitant or unwilling to testify at trial. And a prudent prosecutor seeking to ensure the finality of convictions based on guilty pleas would be advised to disclose not only evidence that the prosecutor personally believes meets the materiality standard of *Brady*, but to disclose any evidence that a court, reviewing a claim, might possibly determine is "material."

3. Finally, as a consequence of these additional burdens on prosecutors, a requirement for pre-plea disclosure delays the resolution of cases. Such delays would frustrate one of the core benefits of plea agreements—conserving "scarce judicial and prosecutorial resources." *Brady v. United States*, 397 U.S. at 752. The delays would also harm crime victims, who must wait longer to see their offenders brought to justice. And the delays would even harm many defendants.

In *Corbitt v. New Jersey*, 439 U.S. 212, 223 (1978), this Court recognized that one benefit a defendant obtains from a guilty plea is avoiding extended pre-trial incarceration and gaining a speedy disposition of his case. The Ninth Circuit rule would undermine this benefit. For example, in

cases where the defendant has been arrested and is being held in custody (*e.g.*, because he cannot post bond or because he is on a probation hold), the defendant may remain in custody while the prosecutor completes the necessary tasks. If the defendant is sentenced to a term of probation or time served, any delay in the time it takes for the prosecutor to conduct these tasks will be additional time in custody that the defendant would not otherwise have had to serve.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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